BILL NO. S-81-02-30

SPECIAL ORDINANCE NO. S-62-81

AN ORDINANCE approving a contract for Sewer Improvement Resolution No. 345-80 between the City of Fort Wayne, Indiana, and Richard Ness Excavating & Trucking Inc. for installation of a sanitary sewer.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That a certain contract, dated January 21, 1981, between the City of Fort Wayne, Indiana, by and through its Mayor and the Board of Public Works and Richard Ness Excavating & Trucking Inc., Contractor for:

the construction of an 8 inch and 10 inch local sanitary sewer in the addition of Country Club and Langford Oaks,

under Board of Public Works Sewer Improvement Resolution No. 345-80, at a total cost of $392,195.30, all as more particularly set forth in said contract which is on file in the Office of the Board of Public Works and is by reference incorporated herein and made a part hereof, be and the same is in all things hereby ratified, confirmed and approved.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.

COUNCILMAN

APPROVED AS TO FORM AND
LEGALITY FEBRUARY 5, 1981.

J. E. Hoffman

JOHN E. HOFFMAN, CITY ATTORNEY

Read the first time in full and on motion by Burns, seconded by V. Schmidt, and duly adopted, read the second time by title and referred to the Committee City Utilities (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____ the _____ day of _____, 19____, at _____ o'clock ___M.,E.S.T.

DATE: 2-17-81

Charles W. Westerman
CHARLES W. WESTERMAN
CITY CLERK

Read the third time in full and on motion by Burns, seconded by D. Schmidt, and duly adopted, placed on its passage. PASSED (~~LOST~~) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
TOTAL VOTES	8			1	
BURNS	✓				
EISBART	✓				
GiaQUINTA	✓				
NUCKOLS	✓				
SCHMIDT, D.				✓	
SCHMIDT, V.	✓				
SCHOMBURG	✓				
STIER	✓				
TALARICO	✓				

DATE: 2-24-81

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (~~ZONING MAP~~) (GENERAL) (~~ANNEXATION~~) (SPECIAL) (~~APPROPRIATION~~) ORDINANCE (~~RESOLUTION~~) No. G-62-81

on the 24th day of February, 19 81.

Charles W. Westerman ATTEST: (SEAL)

CHARLES W. WESTERMAN - CITY CLERK

John Nuckols
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 25th day of February, 19 81, at the hour of 11:30 o'clock A. M.,E.S.T.

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 5th day of March 19 81, at the hour of 4 o'clock P M.,E.S.T.

WINFIELD C. MOSES, JR.
MAYOR

BILL NO. S-81-02-30

REPORT OF THE COMMITTEE ON CITY UTILITIES

WE, YOUR COMMITTEE ON City Utilities TO WHOM WAS REFERRED AN ORDINANCE approving a contract for Sewer Improvement Resolution No. 345-80 between the City of Fort Wayne, Indiana and Richard Ness Excavating & Trucking Inc. for installation of a sanitary sewer

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE DO PASS.

PAUL M. BURNS, CHAIRMAN

VIVIAN G. SCHMIDT, VICE CHAIRMAN

BEN A. EISBART

SAMUEL J. TALARICO

ROY J. SCHOMBURG

CONCURRED IN

DATE 2/24/81 CHARLES W. WESTERMAN, CITY CLERK

70-100-3C
1/21/81

CONTRACT NO. 345-80

THIS CONTRACT made and entered into in triplicate this 21st day of January, 1981, by and between RICHARD NESS EXCAVATING & TRUCKING, INC. herein called CONTRACTOR, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, acting by and through the Mayor, and the Board of Public Works herein called OWNER,

WITNESSETH that the Contractor and the Owner for the considerations hereinafter named, agree as follows:

ARTICLE 1. SCOPE OF WORK

Contractor shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the construction of the following:

LATERAL #6

Beginning at a proposed manhole located 40± LF south of and 10± LF east of the centerline intersection of Taylor Street and Suburban Drive; thence meandering northerly along Suburban Drive 2353± LF to a proposed manhole located 30± LF south of and 10± LF west of the centerline intersection of Suburban Drive and South Bend Drive; thence southwesterly along South Bend Drive 340± LF terminating at a proposed manhole located 250± LF south of and 210± LF west of the centerline intersection of South Bend Drive and Suburban Drive.

LATERAL #7

Beginning at a proposed manhole located 20± LF south of and 10± LF east of the centerline intersection of Glendale Drive and Fountain Avenue; thence meandering northerly along Fountain Avenue 695± LF to a proposed manhole located 670± LF north of and 10± LF west of the centerline intersection of Fountain Avenue and Glendale Drive; thence westerly 640± LF to a proposed manhole located 670± LF north of and 650± LF west of the centerline intersection of Fountain Avenue and Glendale Drive; thence southerly 250± LF to a proposed manhole located 420± LF north of and 650± LF west of the centerline intersection of Fountain Avenue and Glendale Drive; thence westerly 345± LF to a proposed manhole located 910± LF south of and 15± LF west of the centerline intersection of Sun Valley Drive and Langford Lane; thence northerly along Sun Valley Drive 925± LF to a proposed manhole located 15± LF north of and 15± LF west of the centerline intersection of Sun Valley Drive and Langford Lane; thence westerly along Langford Lane 150± LF terminating at a proposed cleanout structure located 15± LF north of and 165± LF west of the centerline intersection of Sun Valley Drive and Langford Lane.

LATERAL #8

Beginning at a proposed manhole located 670± LF north of and 650± LF west of the centerline intersection of Fountain Avenue and Glendale Drive; thence northerly 885± LF to a proposed manhole located 220± LF north of and 330± LF west of the intersection of VanOrman Drive and Langford Lane; thence easterly 230± LF to a proposed manhole located 220± LF north of and 100± LF west of the centerline

intersection of VanOrman Drive and Langford Lane; thence meandering northerly along Fairway Avenue 1265± LF terminating at a proposed manhole located 260± LF south of and 15± LF west of the centerline intersection of Fairway Avenue and South Bend Drive.

LATERAL #9

Beginning at a proposed manhole located 640± LF south of and 15± LF east of the centerline intersection of VanOrman Drive and Langford Lane; thence northerly along VanOrman Drive 620± LF to a proposed manhole located 20± LF south of and 15± LF east of the centerline intersection of VanOrman Drive and Langford Lane; thence northeasterly along Langford Lane 340± LF terminating at a proposed manhole located 160± LF north of and 300± LF east of the centerline intersection of Fountain Avenue and Langford Lane.

LATERAL #10

Beginning at a proposed manhole located 220± LF north of and 330± LF west of the centerline intersection of VanOrman Drive and Langford Lane; thence westerly 155± LF to a proposed manhole located 460± LF south of the centerline intersection of Richland Drive and Westlawn Drive; thence northerly along Westlawn Drive 505± LF to a proposed manhole located 40± LF north of and 15± LF east of the centerline intersection of Richland Drive and Westlawn Drive; thence northeasterly along Richland Drive 300± LF terminating at a proposed manhole located 205± LF north of and 275± LF east of the centerline intersection of Westlawn Drive and Richland Drive.

LATERAL #11

Beginning at a proposed manhole located 40± LF north of and 15± LF east of the centerline intersection of Richland Drive and Westlawn Drive; thence meandering southwesterly along Richland Drive 685± LF to a proposed manhole located 15± LF south of and 15± LF east of the centerline intersection of Richland Drive and Getz Road; thence northerly along Getz Road 300± LF terminating at a proposed manhole located 285± LF south of and 15± LF east of the centerline intersection of South Bend Drive and Getz Road.

LATERAL #12

Beginning at a proposed manhole located 170± LF south of and 15± LF east of the centerline intersection of U.S. 24 and Getz Road; thence south along Getz Road 1269± LF to a proposed manhole located 65± LF north of and 15± LF east of the centerline intersection of South Bend Drive and Getz Road; thence northeasterly along Getz Road 1750± LF terminating at a proposed cleanout structure located 125± LF north of and 140± LF east of the centerline intersection of Northridge Road and South Bend Drive.

LATERAL #13

Beginning at a proposed manhole located 95± LF north of and 15± LF east of the centerline intersection of Bellaire Drive and Getz Road; thence meandering northeasterly along Bellaire Drive 820± LF terminating at a proposed manhole located 135± LF south of and 10± LF west of the centerline intersection of Northridge Road and Bellaire Drive.

LATERAL #14

Beginning at a proposed manhole located 10± LF south of and 285± LF east of the centerline intersection of Northridge Road and Getz Road; thence easterly along Northridge Road 560± LF terminating at a proposed manhole located 10± LF south of and 295± LF east of the centerline intersection of Bellaire Drive and Northridge Road.

Said sewer shall be 8" and 10" in diameter.

all according to Fort Wayne Pollution Control Engineering Department Drawing No. SY-11070, and do everything required by this contract and the other documents constituting a part hereof.

ARTICLE 2. THE CONTRACT SUM

The Owner shall pay Contractor for the performance of the contract the unit price sum of $392,195.30. In event the amount of work is increased or decreased by Owner, the contract sum shall be increased or decreased according to the unit price schedule set forth in the Contractor's Proposal.

8" Sewer Pipe	Twelve dollars and 30/100	12.30
10" Sewer Pipe	Thirteen dollars and 58/100	13.58
Std M-H Type I-A or J	One thousand dollars and no/100	1,000.00
STD M-H Type VI-A or J	One thousand five hundred dollars and no/100	1,500.00
STD Cleanout	Three hundred fifty dollars and no/100	350.00
6" "T" or "WYE"	Thirty-eight dollars and no/100	38.00
6" Building Sewer (Not Grant Fundable)	Eight dollars and no/100	8.00
STD City of Fort Wayne Tap Permit (Not Grant Fundable)	Thrity-five dollars and no/100	35.00
#53 or #73 Special Backfill	Ten dollars and no/100	10.00
Special Backfill	Eight dollars and no/100	8.00
10" Deep Strength Asphalt (Streets)	Twenty dollars and no/100	20.00
4" Deep Strength Asphalt (Driveways)	Seventeen dollars and no/100	17.00
2" Deep Strength Asphaltic Surface	Three dollars and 50/100	3.50
6" Stone & Gravel Surface	Two dollars and no/100	2.00
6" Concrete (Driveways)	Fifteen dollars and no/100	15.00
Double Chip & Seal	One dollar and 75/100	1.75
Seeding & 1" Mulch	No dollars and 70/100	0.70
6"-12" Field Tile Replacement	Eight dollars and no/100	8.00
12"-15" Culvert Pipe Replacement	Fifteen dollars and no/100	15.00
Base Stabilization	Fifteen dollars and no/100	15.00

ARTICLE 3. PROGRESS PAYMENTS

Payments are to be made to the Contractor in accordance with and subject to the provisions embodied in the documents made a part of this Contract.

ARTICLE 4. ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the contract is fully performed.

Upon filing of a Completion Affidavit by the Contractor that the work is ready for final inspection and acceptance, the Board of Public Works will direct the Engineering Department of the Owner to promptly make such inspection. When the Engineering Department finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the Board of Public Works which shall issue a final certificate stating that the work provided for in this Contract has been completed and is accepted thereupon, and the entire balance of the Contract sum shall be due and payable to the Contractor; provided only that Contractor shall first furnish Owner, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid.

ARTICLE 5. WORKMEN'S COMPENSATION ACT

The Contractor will furnish immediately a certificate from the Industrial Board of the State of Indiana, that he has complied with the Workmen's Compensation Act in accordance with Section 14 of the Compensation Act (I.C. 22-3-2-1).

Any judgment rendered against the City of Fort Wayne in any suits for damages for injury to real or personal property, or for any injury sustained by any person growing out of any act or doing of Contractor, or its agents, employees or workmen and that any judgment of any court or award of any Board of Arbitrators or of the State Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation acts of the State of Indiana, now or hereafter in force, relating to compensation for accidental injuries or death suffered by his employees or the employees of any Subcontractor or Subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said Contractor, shall be conclusive against Contractor as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that Contractor indemnify and hold harmless City in the premises.

ARTICLE 6. NONDISCRIMINATION OF LABOR

The Contractor further agrees to be bound by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978, a copy of which Section is attached and incorporated herein and made a part hereof. (NE/1 - NE/3)

ARTICLE 7. PREVAILING WAGE SCALE

The Contractor agrees to pay and also require of his subcontractors that they pay which ever is the highest of Federal, State, and Local wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the provisions of Chapter 319 of the Acts of the General Assembly of the State of Indiana, of 1935, attached hereto and made a part hereof. (WR/1 through WR/34).

ARTICLE 8. COMPONENT PARTS OF THIS CONTRACT

The following documents are as fully a part of this contract as if hereto attached or herein repeated:

A. Advertisement for Bids, for Contract No. 345-80.
B. Instructions to Bidders for Contract No. 345-80.
C. Contractor's Proposal Dated December 16, 1980.
D. Fort Wayne Water Pollution Control Engineering Department Construction Drawing No. SY-11070.
E. General Specifications and Conditions, detailed specifications, construction standards for the installation of storm and sanitary sewers and addendums thereof of the City of Fort Wayne's Water Pollution Control Engineering Department.
F. Federal Contract Provisions.
G. Workmen's Compensation Act (I.C. 22-3-2-1).
H. Non Discrimination of labor General Ordinance No. G-34-78 (as amended).
I. Prevailing wage scale.
J. Performance Bond.
K. Labor and Material Payment Bond.
L. Comprehensive Liability Insurance Coverage.
M. Application for Cut Permit.
N. Escrow Agreement.
O. Notice of Award.
P. Notice to Proceed.
Q. Change Order.
R. Notice of Final Acceptance.
S. Addendum No. 1
T. D.N.R. Permits

ARTICLE 9. GUARANTEE OF WORKMANSHIP

The Contractor shall warrant all materials, labor and equipment furnished and work performed for a period of one (1) year from date of final acceptance in writing by the Owner.

ARTICLE 10. INDEMNITY

Contractor shall furnish to owner, within ten (10) days of the date hereof a certificate from an insuror acceptable to owner showing personal injury and property damage coverages in an amount and of a type acceptable to owner. Insurance in force issued in connection with the work to be done under this Contract in accordance with said Specifications of the City of Fort Wayne, Division I, Section 7.2.4.

ARTICLE 11. ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the Contractor and the Owner under the provisions of this Contract and the work to be performed and materials to be furnished shall be subject to the decision of the Chief Engineer of the Fort Wayne Water Pollution Control Department, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases of the work covered by this Contract will be permitted except on prior written authorization by the Board of Public Works.

ARTICLE 12. COMPLETION DATE

The Contractor agrees to complete the work specified within the contract in 720 consecutive calendar days after having been ordered by the Owner to commence work under this contract.

ARTICLE 13. COUNCILMANIC APPROVAL

This Agreement, although executed on behalf of the Owner by the Mayor and Board of Public Works of the City of Fort Wayne, Indiana, shall not be binding upon the Owner unless and until the same shall have been ratified and approved by the Environmental Protection Agency and Common Council of the City of Fort Wayne, Indiana, and should said Environmental Protection Agency or Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall become wholly void.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

RICHARD NESS EXCAVATING & TRUCKING, INC.

BY: Paul Richard Ness, President

BY: Maureen M. Ness, Secretary

CITY OF ~~FORT WAYNE~~, INDIANA

BY: _____
Win Moses, Jr., Mayor

ATTEST:

Sandra E. Kennedy, Clerk

APPROVED AS TO FORM AND LEGALITY:

ASSOCIATE CITY ATTORNEY

BOARD OF PUBLIC WORKS

Mark L. Akers, Chairman

Roberta Anderson Staten, Member

Herbert R. Gamache, Member

Approved by the Common Council of the City of Fort Wayne on _____ day of _____, 19____.

PRODUCER (NAME AND ADDRESS OF AGENCY) — Cert. of Ins.

Yaste, Zent & Rye, Inc.
P.O. Box 1367
Fort Wayne, Indiana 46801

COMPANIES AFFORDING COVERAGES

COMPANY LETTER A — United States Fidelity & Guaranty

COMPANY LETTER B — American States Insurance Company

COMPANY LETTER C

COMPANY LETTER D

COMPANY LETTER E

NAME AND ADDRESS OF INSURED

Richard Ness Excavating & Trucking, Inc.
P.O. Box 455
Huntington, Indiana 46750

This is to certify that policies of insurance listed below have been issued to the insured named above and are in force at this time.

COMPANY LETTER	TYPE OF INSURANCE	POLICY NUMBER	POLICY EXPIRATION DATE	Limits of Liability in Thousands (000)	EACH OCCURRENCE	AGGREGATE
A	GENERAL LIABILITY [X] COMPREHENSIVE FORM [X] PREMISES - OPERATIONS [ ] EXPLOSION AND COLLAPSE HAZARD [X] UNDERGROUND HAZARD [X] PRODUCTS - COMPLETED OPERATIONS HAZARD [X] CONTRACTUAL INSURANCE [X] BROAD FORM PROPERTY DAMAGE [X] INDEPENDENT CONTRACTORS [X] PERSONAL INJURY	MP 48263	11/21/81	BODILY INJURY	$ 500	$ 500
				PROPERTY DAMAGE	$ 100	$ 200
				BODILY INJURY AND PROPERTY DAMAGE COMBINED	$	$
				PERSONAL INJURY		$ 500
A	AUTOMOBILE LIABILITY [X] COMPREHENSIVE FORM [X] OWNED [X] HIRED [X] NON OWNED	MP 48263	11/21/81	BODILY INJURY (EACH PERSON)	$	
				BODILY INJURY (EACH OCCURRENCE)	$	
				PROPERTY DAMAGE	$	
				BODILY INJURY AND PROPERTY DAMAGE COMBINED	$ 500	
B	EXCESS LIABILITY [X] UMBRELLA FORM [ ] OTHER THAN UMBRELLA FORM	SU 23423d	12/20/81	BODILY INJURY AND PROPERTY DAMAGE COMBINED	$1,000	$1,000
A	WORKERS' COMPENSATION and EMPLOYERS' LIABILITY	1-3900-777575	11/21/81	STATUTORY		
					$ 100	
	OTHER					

BOARD OF PUBLIC WORKS
JAN 5 1981
FILED

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES

ANY AND ALL OPERATIONS OF THE NAMED INSURED.

Cancellation: Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 10 days written notice to the below named certificate holder, but failure to mail such notice shall impose no obligation or liability of any kind upon the company.

NAME AND ADDRESS OF CERTIFICATE HOLDER

City of Fort Wayne - Sewer Dept.
One Main Street
City/County Building
Fort Wayne, IN 46801

DATE ISSUED 12/19/80

AUTHORIZED REPRESENTATIVE

ACORD 25 (R4 2 77)

UNITED STATES FIDELITY AND GUARANTY COMPANY

Baltimore, Maryland

(A Stock Company)

LABOR AND MATERIAL PAYMENT BOND

Approved by The American Institute of Architects

A. I. A. Document No. A-311 (February 1970 Edition)

KNOW ALL MEN BY THESE PRESENTS: BOND NUMBER.....

That Richard Ness Excavating & Trucking Inc.

.....as Principal,

hereinafter called Principal, and UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation organized and existing under the laws of the State of Maryland, Baltimore, Maryland as Surety, hereinafter called Surety, are held and firmly bound unto .....

City of Fort Wayne, Indiana

as Obligee, hereinafter called Owner, for the use and benefit of claimants as hereinbelow defined, in the amount of Three Hundred, Ninety-Two Thousand, One Hundred Ninety-Five and 30/100---Dollars ($ 392,195.30), for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has by written agreement dated January 21 19 81, entered into a contract with Owner for Junk Ditch Area Sewer Improvements, Project #C0180599. Country Club-Langford Oaks, Sanitvary Sewer, Resolution #345-80.
in accordance with drawings and specifications prepared by .....
(Here insert full name, title and address)

.....which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

(1) A claimant is defined as one having a direct contract with the Principal or with a sub-contractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

(2) The above-named Principal and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Owner shall not be liable for the payment of any costs or expenses of any such suit.

(3) No suit or action shall be commenced hereunder by any claimant,

(a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: The Principal, the Owner, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, Owner or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.

(b) After the expiration of one (1) year following the date on which Principal ceased work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

(c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.

(4) The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this 1st day of January, 19 81

RICHARD NESS EXCAVATING & TRUCKING, INC.

By ..... Pres (Seal)
Principal

(Witness)

WASTE, ZENT & RYE, INC., Agents

(Witness)

UNITED STATES FIDELITY AND GUARANTY COMPANY

By ..... (Seal)
Attorney-in-fact

This bond is issued simultaneously with performance bond in favor of the Owner conditioned on the full and faithful performance of the Contract.

CERTIFIED COPY

GENERAL POWER OF ATTORNEY

No. 90088

Know all Men by these Presents:

That UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation organized and existing under the laws of the State of Maryland, and having its principal office at the City of Baltimore, in the State of Maryland, does hereby constitute and appoint

Vicki L. Anderson

of the City of Fort Wayne, State of Indiana its true and lawful attorney in and for the State of Indiana

for the following purposes, to wit:

To sign its name as surety to, and to execute, seal and acknowledge any and all bonds, and to respectively do and perform any and all acts and things set forth in the resolution of the Board of Directors of the said UNITED STATES FIDELITY AND GUARANTY COMPANY, a certified copy of which is hereto annexed and made a part of this Power of Attorney; and the said UNITED STATES FIDELITY AND GUARANTY COMPANY, through us, its Board of Directors, hereby ratifies and confirms all and whatsoever the said

Vicki L. Anderson

may lawfully do in the premises by virtue of these presents.

In Witness Whereof, the said UNITED STATES FIDELITY AND GUARANTY COMPANY has caused this instrument to be sealed with its corporate seal, duly attested by the signatures of its Vice-President and Assistant Secretary, this 16th day of November, A. D. 1979

UNITED STATES FIDELITY AND GUARANTY COMPANY.

(Signed) By Bertram W. Sealy, Jr.
Vice-President.

(SEAL)

(Signed) William J. Phelan
Assistant Secretary.

STATE OF MARYLAND, BALTIMORE CITY, } ss:

On this 16th day of November, A. D. 1979, before me personally came Bertram W. Sealy, Jr., Vice-President of the UNITED STATES FIDELITY AND GUARANTY COMPANY and William J. Phelan, Assistant Secretary of said Company, with both of whom I am personally acquainted, who being by me severally duly sworn, said that they, the said Bertram W. Sealy, Jr. and William J. Phelan were respectively the Vice-President and the Assistant Secretary of the said UNITED STATES FIDELITY AND GUARANTY COMPANY, the corporation described in and which executed the foregoing Power of Attorney; that they each knew the seal of said corporation; that the seal affixed to said Power of Attorney was such corporate seal, that it was so fixed by order of the Board of Directors of said corporation, and that they signed their names thereto by like order as Vice-President and Assistant Secretary, respectively, of the Company.

My commission expires the first day in July, A. D. 19 82

(SEAL) (Signed) Margaret M. Hurst
Notary Public.

STATE OF MARYLAND BALTIMORE CITY, } Sct.

I, William Allen, Clerk of the Superior Court of Baltimore City, which Court is a Court of Record, and has a seal, do hereby certify that Margaret M. Hurst, Esquire, before whom the annexed affidavits were made, and who has thereto subscribed his name, was at the time of so doing a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and sworn and authorized by law to administer oaths and take acknowledgments, or proof of deeds to be recorded therein. I further certify that I am acquainted with the handwriting of the said Notary, and verily believe the signature to be his genuine signature.

In Testimony Whereof, I hereto set my hand and affix the seal of the Superior Court of Baltimore City, the same being a Court of Record, this 16th day of November, A. D. 19 79

(SEAL) (Signed) William Allen
Clerk of the Superior Court of Baltimore City.

FS 3 (5-77)

COPY OF RESOLUTION

That Whereas, it is necessary for the effectual transaction of business that this Company appoint agents and attorneys with power and authority to act for it and in its name in States other than Maryland, and in the Territories of the United States and in the Provinces of the Dominion of Canada and in the Colony of Newfoundland.

Therefore, be it Resolved, that this Company do, and it hereby does, authorize and empower its President or either of its Vice-Presidents in conjunction with its Secretary or one of its Assistant Secretaries, under its corporate seal, to appoint any person or persons as attorney or attorneys-in-fact, or agent or agents of said Company, in its name and as its act, to execute and deliver any and all contracts guaranteeing the fidelity of persons holding positions of public or private trust, guaranteeing the performances of contracts other than insurance policies and executing or guaranteeing bonds and undertakings, required or permitted in all actions or proceedings, or by law allowed, and

Also, in its name and as its attorney or attorneys-in-fact, or agent or agents to execute and guarantee the conditions of any and all bonds, recognizances, obligations, stipulations, undertakings or anything in the nature of either of the same, which are or may by law, municipal or otherwise, or by any Statute of the United States or of any State or Territory of the United States or of the Provinces of the Dominion of Canada or of the Colony of Newfoundland, or by the rules, regulations, orders, customs, practice or discretion of any board, body, organization, office or officer, local, municipal or otherwise, be allowed, required or permitted to be executed, made, taken, given, tendered, accepted, filed or recorded for the security or protection of, by or for any person or persons, corporation, body, office, interest, municipality or other association or organization whatsoever, in any and all capacities whatsoever, conditioned for the doing or not doing of anything or any conditions which may be provided for in any such bond, recognizance, obligation, stipulation, or undertaking, or anything in the nature of either of the same.

I, Richard Calder , an Assistant Secretary of the UNITED STATES FIDELITY AND GUARANTY COMPANY, do hereby certify that the foregoing is a full, true and correct copy of the original power of attorney given by said Company to

Vicki L. Anderson

of Fort Wayne, Indiana , authorizing and empowering her to sign bonds as therein set forth, which power of attorney has never been revoked and is still in full force and effect.

And I do further certify that said Power of Attorney was given in pursuance of a resolution adopted at a regular meeting of the Board of Directors of said Company, duly called and held at the office of the Company in the City of Baltimore, on the 11th day of July, 1910, at which meeting a quorum of the Board of Directors was present, and that the foregoing is a true and correct copy of said resolution, and the whole thereof as recorded in the minutes of said meeting.

In Testimony Whereof, I have hereunto set my hand and the seal of the UNITED STATES FIDELITY AND GUARANTY COMPANY on

(Date) January 1, 1981

Richard Calder
Assistant Secretary.

BOARD OF PUBLIC WORKS
JAN 19 1981

UNITED STATES FIDELITY AND GUARANTY COMPANY

Baltimore, Maryland

(A Stock Company)

PERFORMANCE BOND

Approved by The American Institute of Architects

A. I. A. Document No. A-311 (February 1970 Edition)

BOND NUMBER.....

KNOW ALL MEN BY THESE PRESENTS:

That Richard Ness Excavating & Trucking Inc.

..... as Principal, hereinafter called Contractor, and UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation organized and existing under the laws of the State of Maryland, Baltimore, Maryland, as Surety, hereinafter called Surety, are held and firmly bound unto City of Fort Wayne, Indiana as Obligee, hereinafter called Owner, in the amount of Three Hundred Ninety-Two Thousand, One Hundred Ninety-Five and 30/100---------- Dollars ($392,195.30----), for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated January 21, 19 81, entered into a contract with Owner for

Junk Ditch Area Sewer Improvement, Project #C-180599-09. Country Club-Langford Oaks, Sanitary Sewer, Resolution #345-80.

in accordance with drawings and specifications prepared by (Here insert full name, title and address) ....., which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the Owner.

Whenever Contractor shall be, and declared by Owner to be in default under the Contract, the Owner having performed Owner's obligations thereunder, the Surety may promptly remedy the default, or shall promptly

(1) Complete the Contract in accordance with its terms and conditions, or

(2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or, if the Owner elects, upon determination by the Owner and the Surety jointly of the lowest responsible bidder, arrange for a contract between such bidder and Owner, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price, but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by Owner to Contractor under the Contract and any amendments thereto, less the amount properly paid by Owner to Contractor.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the heirs, executors, administrators or successors of the Owner.

Signed and sealed this 21st day of January, 19 81

In the presence of:

RICHARD NESS EXCAVATING & TRUCKING INC.

By Paul Richard Ness (Seal)
Principal

UNITED STATES FIDELITY AND GUARANTY COMPANY

By Vicki L. Anderson (Seal)
Attorney-in-fact

(Witness) VASTE, ZENT & RYE, INC., Agents

(Witness) Gerald O. Dahle

CERTIFIED COPY

GENERAL POWER OF ATTORNEY

No. 90088

Know all Men by these Presents:

That UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation organized and existing under the laws of the State of Maryland, and having its principal office at the City of Baltimore, in the State of Maryland, does hereby constitute and appoint

Vicki L. Anderson

of the City of Fort Wayne, State of Indiana
its true and lawful attorney in and for the State of Indiana

for the following purposes, to wit:

To sign its name as surety to, and to execute, seal and acknowledge any and all bonds, and to respectively do and perform any and all acts and things set forth in the resolution of the Board of Directors of the said UNITED STATES FIDELITY AND GUARANTY COMPANY, a certified copy of which is hereto annexed and made a part of this Power of Attorney; and the said UNITED STATES FIDELITY AND GUARANTY COMPANY, through us, its Board of Directors, hereby ratifies and confirms all and whatsoever the said

Vicki L. Anderson

may lawfully do in the premises by virtue of these presents.

In Witness Whereof, the said UNITED STATES FIDELITY AND GUARANTY COMPANY has caused this instrument to be sealed with its corporate seal, duly attested by the signatures of its Vice-President and Assistant Secretary, this 16th day of November, A. D. 1979

UNITED STATES FIDELITY AND GUARANTY COMPANY.

(Signed) By Bertram W. Sealy, Jr.
Vice-President.

(SEAL)

(Signed) William J. Phelan
Assistant Secretary.

STATE OF MARYLAND, }
BALTIMORE CITY, } ss:

On this 16th day of November, A. D. 1979, before me personally came Bertram W. Sealy, Jr., Vice-President of the UNITED STATES FIDELITY AND GUARANTY COMPANY and William J. Phelan, Assistant Secretary of said Company, with both of whom I am personally acquainted, who being by me severally duly sworn, said that they, the said Bertram W. Sealy, Jr. and William J. Phelan were respectively the Vice-President and the Assistant Secretary of the said UNITED STATES FIDELITY AND GUARANTY COMPANY, the corporation described in and which executed the foregoing Power of Attorney; that they each knew the seal of said corporation; that the seal affixed to said Power of Attorney was such corporate seal, that it was so fixed by order of the Board of Directors of said corporation, and that they signed their names thereto by like order as Vice-President and Assistant Secretary, respectively, of the Company.

My commission expires the first day in July, A. D. 1982

(SEAL) (Signed) Margaret M. Hurst
Notary Public.

STATE OF MARYLAND }
BALTIMORE CITY, } Sct.

I, William Allen, Clerk of the Superior Court of Baltimore City, which Court is a Court of Record, and has a seal, do hereby certify that Margaret M. Hurst, Esquire, before whom the annexed affidavits were made, and who has thereto subscribed his name, was at the time of so doing a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and sworn and authorized by law to administer oaths and take acknowledgments, or proof of deeds to be recorded therein. I further certify that I am acquainted with the handwriting of the said Notary, and verily believe the signature to be his genuine signature.

In Testimony Whereof, I hereto set my hand and affix the seal of the Superior Court of Baltimore City, the same being a Court of Record, this 16th day of November, A. D. 19 79

(SEAL) (Signed) William Allen
Clerk of the Superior Court of Baltimore City.

FS 3 (6-77)

COPY OF RESOLUTION

BOARD OF PUBLIC WORKS

That Whereas, it is necessary for the effectual transaction of business that this Company appoint agents and attorneys with power and authority to act for it and in its name in States other than Maryland, and in the Territories of the United States and in the Provinces of the Dominion of Canada and in the Colony of Newfoundland.

Therefore, be it Resolved, that this Company do, and it hereby does, authorize and empower its President or either of its Vice-Presidents in conjunction with its Secretary or one of its Assistant Secretaries, under its corporate seal, to appoint any person or persons as attorney or attorneys-in-fact, or agent or agents of said Company, in its name and as its act, to execute and deliver any and all contracts guaranteeing the fidelity of persons holding positions of public or private trust, guaranteeing the performances of contracts other than insurance policies and executing or guaranteeing bonds and undertakings, required or permitted in all actions or proceedings, or by law allowed, and

Also, in its name and as its attorney or attorneys-in-fact, or agent or agents to execute and guarantee the conditions of any and all bonds, recognizances, obligations, stipulations, undertakings or anything in the nature of either of the same, which are or may by law, municipal or otherwise, or by any Statute of the United States or of any State or Territory of the United States or of the Provinces of the Dominion of Canada or of the Colony of Newfoundland, or by the rules, regulations, orders, customs, practice or discretion of any board, body, organization, office or officer, local, municipal or otherwise, be allowed, required or permitted to be executed, made, taken, given, tendered, accepted, filed or recorded for the security or protection of, by or for any person or persons, corporation, body, office, interest, municipality or other association or organization whatsoever, in any and all capacities whatsoever, conditioned for the doing or not doing of anything or any conditions which may be provided for in any such bond, recognizance, obligation, stipulation, or undertaking, or anything in the nature of either of the same.

I, Richard Calder , an Assistant Secretary of the UNITED STATES FIDELITY AND GUARANTY COMPANY, do hereby certify that the foregoing is a full, true and correct copy of the original power of attorney given by said Company to

Vicki L. Anderson

of Fort Wayne, Indiana , authorizing and empowering her to sign bonds as therein set forth, which power of attorney has never been revoked and is still in full force and effect.

And I do further certify that said Power of Attorney was given in pursuance of a resolution adopted at a regular meeting of the Board of Directors of said Company, duly called and held at the office of the Company in the City of Baltimore, on the 11th day of July, 1910, at which meeting a quorum of the Board of Directors was present, and that the foregoing is a true and correct copy of said resolution, and the whole thereof as recorded in the minutes of said meeting.

In Testimony Whereof, I have hereunto set my hand and the seal of the UNITED STATES FIDELITY AND GUARANTY COMPANY on

(Date) Janaury 1, 1981

Richard Calder
Assistant Secretary.

SPECIMEN FORM
PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that

Richard Ness Excavating & Trucking, Inc.
(Name of Contractor)

#1 Ditzfield St., Huntington, IN 46750
(Address of Contractor)

a Corporation, hereinafter called Principal,
(Corporation, Partnership or Individual)

and _____
(Name of Surety)

and duly authorized to transact business in the State of Indiana, hereinafter called Surety, are held and firmly bound unto the City of Fort Wayne, and Indiana Municipal Corporation in the penal sum of _____ Dollars ($_____) (value of work) for the payment whereof well and truely to be made, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the Owner, dated the 21 day of January 1981, for the construction of:

_____

all according to Fort Wayne Water Pollution Control Engineering Department Drawing No. SY-11072, SY-11075, SY-11070 through _____ and special provisions, and according to the City of Fort Wayne's Specifications and Standard Drawings and Addendums, contained herein.

WHEREAS, said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work or to the specifications, and

WHEREAS, no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modivication thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor, performed in such work whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

Contract No.

IN WITNESS WHEREOF, this instrument is executed _____ counterparts,
(number)
each one of which shall be deemed an original, this _____ day of
_____, 19____.

ATTEST:

RICHARD ARMS EXCAVATING & TRUCKING, INC.

Richard Arms
Principal

President

_____
(Principal) Secretary

[SEAL]

By _____ [S]

_____
(Address)

_____

_____
Witness as to Principal

_____
(Address)

_____

_____
Surety

ATTEST:

By _____
Attorney-in-Fact

_____
(Surety) Secretary

[SEAL]

_____
Witness as to Surety

_____
(Address)

_____
(Address)

_____

NOTE: Date of Bond must not be prior to date of Contract.
If Contractor is Partnership, all partners should execute bond.

"APPARENT" LOW BIDDERS
JUNK DITCH

RESOLUTION	CONTRACTOR	BID	ENGINEER'S ESTIMATE
341-80	Winzeler Excavating	$ 644,070.50	$ 783,311.00
342-80	Winzeler Excavating	$ 1,282,562.00	$ 1,514,839.00
345-80	Ness Excavating	$ 392,195.30	$ 590,258.75
347-80	Ness Excavating	$ 181,495.25	$ 278,685.00
348-80	Winzeler Excavating	$ 652,385.05	$ 1,075,538.25
349-50	T-G Excavating	$ 236,652.90	$ 343,737.50
350-50	Ness Excavating	$ 166,972.75	$ 238,227.25
351-50	Winzeler Excavating	$ 476,890.30	$ 626,400.00
352-50	Bercot, Inc.	$ 178,768.55	$ 159,265.35
TOTAL BIDS		$ 4,211,992.60	$ 5,610,262.10

DIFFERENCE: 1,398,269.50 = 24.92% Under Engineer's Estimate

NUMBER OF BIDS RECEIVED - 61

NUMBER OF BIDDERS - 20

JUNK DITCH STUDY AREA
December 16, 1980

Resolution No. 341-80

CONTRACTOR	BID
Winzeler Excavating	644,070.50
Dehner, John, Inc.	669,963.85
Ferrera, Rocco & Company	688,920.00
Bercot, Inc.	704,974.10
Waynesfield Construction	793,896.00
Busch, Inc.	797,161.95

Resolution No. 342-80

Winzeler Excavating	1,282,562.00
Dehner, John, Inc.	1,329,013.80
Busch, Inc.	1,486,029.25
Ferrera, Rocco & Company	1,579,275.00

Resolution No. 345-80

Ness, Richard Excavating	392,195.30
Nobis Construction	451,039.50
Dailey, L.W., Inc.	484,756.85
Bercot, Inc.	487,882.70
Dehner, John, Inc.	499,045.25
T&F Construction Corporation	505,808.79
T-G Excavating	536,809.55
Ralph Reed & Sons, Inc.	558,384.50
Busch, Inc.	895,634.00

Resolution No. 347-80

Ness, Richard Excavating	181,495.25
Lengacher Construction	186,880.00
Earth Construction	202,784.55
Hartman, John Construction	202,880.00
T-G Excavating, Inc.	205,842.15
Dailey, L.W., Inc.	206,497.00
Bercot, Inc.	220,087.80
Curner, Inc.	233,235.50
Hipskind Asphalt Corporation	233,260.00
T&F Construction Corporation	245,402.35
Allstar Construction	278,758.75
Moellering Construction	283,291.25
Fleming Excavating	303,596.50

Resolution No. 348-80

CONTRACTOR	BID
Winzeler Excavating	652,385.05
Earth Construction	727,745.00
Dehner, John, Inc.	814,860.55
Fleming Excavating	876,415.25
Hipskind Asphalt Corporation	899,922.00
Busch, Inc.	908,756.50
Bercot, Inc.	922,049.25
Reed, Ralph & Sons, Inc.	967,582.50

Resolution No. 349-80

T-G Excavating	236,652.90
Dehner, John, Inc.	261,894.45
Ness, Richard Excavating	273,167.25
Hipskind Asphalt Corporation	288,470.00
Bercot, Inc.	323,090.45

Resolution No. 350-80

Ness, Richard Excavating	166,972.75
Earth Construction	167,842.10
Hartman, John Construction	173,042.50
T-G Excavating	179,271.50
Curner, Inc.	192,379.70
Hipskind Asphalt Corporation	195,747.00
T&F Construction Corporation	199,799.90
Bercot, Inc.	214,198.40
Fleming Excavating	219,586.00

Resolution No. 351-80

Winzeler Excavating	476,890.30
Dehner, John, Inc.	513,554.40
T-G Excavating	597,194.75
Waynesfield Construction	746,720.50
Reed, Ralph & Sons,Inc.	900,035.00

Resolution No. 352-80

Bercot, Inc.	178,768.55
Reed, Ralph & Sons, Inc.	179,927.00

Admn. Appr. _____

DIGEST SHEET

S-81-02-30

TITLE OF ORDINANCE Junk Ditch Area Sanitary Improvements; Sewage Works Grant No. C-180599-08; Sewer Resolution No. 345-80

DEPARTMENT REQUESTING ORDINANCE Board of Public Works

SYNOPSIS OF ORDINANCE A CONTRACT WITH RICHARD NESS EXCAVATING AND TRUCKING, INC. TO CONSTRUCT 8 INCH AND 10 INCH LOCAL SANITARY SEWERS IN THE ADDITION OF COUNTRY CLUB AND LANGFORD OAKS.

EFFECT OF PASSAGE Improvement to the water quality in the Junk Ditch Area with the construction of sanitary sewers.

EFFECT OF NON-PASSAGE The loss of both Federal and State Grant Funds to improve the City of Fort Wayne's environs.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) The construction of this project will cost $392,195.30 which will be financed by USEPA 75%, State 10% City Utilities 15%.

ASSIGNED TO COMMITTEE (PRESIDENT) _____